

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MATTHEW LALLATHIN,

Petitioner,

v.

ALAN LAZAROFF, Warden,

Respondent.

CASE NO. 2:05-cv-1155

JUDGE FROST

MAGISTRATE JUDGE ABEL

OPINION AND ORDER

On October 23, 2006, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be dismissed. Doc. No. 12. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. Doc. No. 14. For the reasons that follow, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

Petitioner objects to all of the Magistrate Judge's recommendations. As cause for his failure to raise ineffective assistance of trial counsel claims in post conviction proceedings, petitioner appears to assert the ineffective assistance of counsel; however, the ineffective assistance of counsel cannot constitute cause for petitioner's procedural default where he had no right to counsel in such proceedings. *See Gulertekin v. Tinnelman-Cooper*, 340 F.3d 415, 425 (6th Cir.2003), citing *Coleman v. Thompson*, 501 U.S. 722, 752-53 (1991); *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). Petitioner also now argues that he fairly presented claim one to the state courts by referring to the Fourteenth Amendment of the United States Constitution and to *State v. Arnold*, 1981 WL 5637

(Ohio App. 6 Dist. June 12, 1981), in his appellate brief to the Ohio Supreme Court; however, the Ohio Supreme Court will not ordinarily consider any claim not raised in the court below. *State v. Jester*, 32 Ohio St.3d 147, 154 (1987), citing *Toledo v. Reasonover*, 5 Ohio St.2d 22 (1965), paragraph two of the syllabus. Further, *State v. Arnold*, *supra*, referred to by petitioner, did not discuss any constitutional issue. Finally, petitioner raises all of the same arguments that were previously presented.

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of those portions of the *Report and Recommendation* objected to by petitioner. In view of the foregoing, and for the reasons detailed in the Magistrate Judge's *Report and Recommendation*, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

The Clerk shall enter **FINAL JUDGMENT** in this action.

/s/ Gregory L. Frost
GREGORY L. FROST
United States District Judge